

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

DISCOVER NSA

Docket No. MC2011-19

DISCOVER NSA

Docket No. R2011-3

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO PUBLIC  
REPRESENTATIVE MOTION FOR ISSUANCE OF  
COMMISSION INFORMATION REQUEST**  
(March 28, 2013)

On March 21, 2013, the Public Representative ("PR") filed Public Representative Motion for Issuance of Commission Information Request ("Motion"). In the Motion, the PR requested that the Postal Regulatory Commission ("Commission") order the Postal Service to respond to six questions. The PR states that without a response to these questions the amended NSA cannot be evaluated for compliance with the PAEA. However, the PR's Motion is moot because the Commission has already considered the PR's concerns in Chairman's Information Requests ("CHIR") Nos. 3 and 4 in this proceeding and in its Annual Compliance Determination ("ACD") FY2012.

The Postal Service hereby opposes the Motion. The Commission addressed the PR's first three questions in CHIR Nos. 3 and 4. The focus of the information requests were on gaining a better understanding of the effect of the proposed amendment to the NSA. The Commission did not adopt the PR's fourth question regarding whether Discover is, or plans to be, a party to any other NSA that involves "an expedited service" while this amended NSA is in effect. Not only is this question requesting commercially sensitive information, the Discover NSA approved in Docket Nos. R2011-3 and MC2011-19 is independent of any other NSA, market-dominant or competitive.

Additionally, any potential overlap of the volume covered by the Discover NSA, for purposes of determining whether the threshold has been established, and any potential Priority Mail contract concerns volume already obtained by the Postal Service (volume transferred from Standard Mail or First-Class Mail service to Priority Mail service) and not volume taken from competitors. Discover also would not receive a rebate on the shifted Priority Mail in the Discover Market-Dominant NSA.

The PR's fifth and sixth question relate to the Postal Service's forecasts of the baseline volume (what volumes would have been without rebates) for Eligible First-Class and Standard letters. This issue was addressed in the initial review of the original Discover NSA and in the ACD FY2012. The PR has not raised any new concerns outside of those discussed in the original proceeding or ACD.

While the Commission is free to pose questions to the Postal Service in the form of Presiding Officer's Information Requests, Commission procedures do not permit discovery for interested parties in these types of proceedings. The Postal Service has consistently argued that the typical 45-day request and comment period is not structured for a discovery period, particularly in the context of a Rule 21 seven-day response period for motions. Mail classification proceedings also do not specifically permit such discovery requests.<sup>1</sup> This type of proceeding is designed for mailers to use the "specified period for public comment" to provide their input or identify areas where the Postal Service needs to offer clarification.<sup>2</sup> After the comment period, the Commission traditionally reviews the Postal Service's request and either: 1) approves the request; 2) denies the request; 3) institutes further proceedings; 4) allows the Postal

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<sup>1</sup> See 39 C.F.R. § 3020.30 *et seq.*

<sup>2</sup> 39 C.F.R. § 3020.33(e).

Service to modify the request, or; 5) directs the Postal Service to take other appropriate action.<sup>3</sup>

The Postal Service acknowledges the PR's concerns, but does not want to set a precedent where participants in mail classification dockets think it is acceptable not to comply with the applicable rules. The Postal Service invites the PR to submit any concerns that have not been addressed in the Postal Service's response to CHIR Nos. 3 and 4, and in this Motion, in the form of comments. In fact, the comment period has been extended to April 2, 2013 for this very purpose.<sup>4</sup> If the comments filed in this case demonstrate that there are areas where the Postal Service can provide a more detailed explanation, it will likely be addressed by the Postal Service in reply comments.

Thus, the Postal Service respectfully requests that the Commission deny the PR's Motion.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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<sup>3</sup> 39 C.F.R. § 3020.34.

<sup>4</sup> Docket Nos. R2011-3/MC2011-19, Order No. 1684, Order Extending Time for Public Comment, March 27, 2013.